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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13
14
15 CRISSIE CARNELL BIXLER;
16 CEDRIC BIXLER-ZAVALA; JANE
17 DOE #1; MARIE BOBETTE RIALES;
18 and JANE DOE #2,

19 Plaintiffs,

20 v.

21 CHURCH OF SCIENTOLOGY
22 INTERNATIONAL; RELIGIOUS
23 TECHNOLOGY CENTER; CHURCH
24 OF SCIENTOLOGY CELEBRITY
25 CENTRE INTERNATIONAL;
DAVID MISCAVIGE; DANIEL
MASTERSON; and DOES 1-25,

Defendants.

CASE No. 19STCV29458

[Assigned for All Purposes to:
Hon. Steven J. Kleifield, Dept. 57]

SPECIALLY-APPEARING
DEFENDANT DAVID
MISCAVIGE'S NOTICE OF
MOTION AND MOTION TO
QUASH SERVICE OF SUMMONS
AND FIRST AMENDED
COMPLAINT; MEMORANDUM
OF POINTS AND AUTHORITIES

*[Declarations of Lynn R. Farny,
Warren McShane, Stano Sersen,
Shun Tokunaga, Ervin Kisded, and
Davide Greco; Request for Judicial
Notice; and [Proposed] Order filed
concurrently herewith]*

Date: May 12, 2021
Time: 8:30 a.m.
Dept.: 57

RESERVATION ID:
368970839993631373510631

Action Filed: August 22, 2019
Trial Date: Not Set

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 12, 2021 at 8:30 a.m., or as soon thereafter as counsel shall be heard, in Department 57 of the Superior Court for the State of California for the County of Los Angeles, located at 111 N. Hill Street, Los Angeles, California, 90012, Defendant David Miscavige will specially appear and move the Court for an order quashing the purported service of the summons and First Amended Complaint on Mr. David Miscavige.

The Motion is made under the authority of *Code of Civil Procedure* § 418.10 on the ground that Mr. Miscavige was never served with the summons and operative complaint.

The Motion is made upon this Notice, the attached memorandum of points and authorities, the Declarations of Lynn R. Farny, Warren McShane, Stano Sersen, Shun Tokunaga, Ervin Kisded, and Davide Greco, the Request for Judicial Notice, all pleadings and documents on file in this action, such further papers and authorities as may be filed in support hereof, and oral argument as may be presented at the hearing on the Motion.

DATED: January 11, 2021 ELKINS KALT WEINTRAUB REUBEN
GARTSIDE LLP

By:

Jeffrey K. Riffer

Attorneys for Specially-Appearing Defendant
David Miscavige

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. David Miscavige is the ecclesiastical leader of the Scientology religion and the Chairman of the Board of Religious Technology Center (“RTC,” another defendant).

Mr. Miscavige should never have been named in this lawsuit.

Plaintiffs filed this lawsuit more than sixteen months ago, and have never satisfied their fundamental obligation to serve Mr. Miscavige with the summons or any version of the complaint. In that time, they have filed demonstrably false Proofs of Service (which were quashed by this Court), pursued a baseless motion for leave to serve by publication (which was rejected), and now attempt to rely upon woefully insufficient substitute service.

Each of these false and/or failed service attempts followed long periods of inactivity, during which Plaintiffs made no attempts to personally serve Mr. Miscavige.

Now, sixteen months after filing their lawsuit and nine months after
filing the First Amended Complaint (“FAC”), Plaintiffs purport to have served
Mr. Miscavige (via substitute service) with the FAC at a time when Mr.
Miscavige was well known to have been thousands of miles away in
Clearwater, Florida. Remarkably, Plaintiffs *again* filed false Proofs of Service.

Plaintiffs' purported service of the FAC should be quashed.

II. STATEMENT OF FACTS

A. This Court Quashed Plaintiffs' First False Proof of Service

Plaintiffs filed their original Complaint on August 22, 2019, and have been playing games ever since.

27 On October 23, 2019, Plaintiffs filed a purported Proof of Service of the

1 summons and original complaint stating, under penalty of perjury, that Mr.
2 Miscavige was served by Robert Hall, a registered process server, via
3 substitute service on October 17, 2019 at 10:20 a.m. at 6331 Hollywood
4 Boulevard, Los Angeles, CA 90028.

5 There were three fatal flaws.

6 First, Hall lacks credibility. A Los Angeles Superior Court judge (Hon.
7 William F. Fahey) found Hall's testimony regarding service in another case to
8 be "evasive and not credible." *See City Breeze, LLC v. Shahi*, No. B259117,
9 2016 WL 6236422, at *2-3 (Cal. Ct. App. Oct. 25, 2016).¹ The Court of Appeal
10 in *City Breeze* affirmed the trial court order setting aside a default judgment
11 due to Hall's fraudulent proof of service; Hall's behavior was so improper that
12 the party who hired Hall did not challenge, on appeal, the trial court's finding
13 of Hall's fraud. *See id.* at *2-4, *7.

14 Second, Hall's purported service was demonstrably false. Contrary to
15 Hall's sworn Declaration of Due Diligence, the security video archive
16 recordings maintained by Defendants showed that Hall never approached or
17 entered 6331 Hollywood Blvd. on the dates and times alleged. Moreover, as
18 demonstrated in a declaration submitted to this Court in support of
19 Defendants' motions to quash by Lewis Miranda, the lobby receptionist for the
20 building at 6331 Hollywood Boulevard in Los Angeles (which notably is *not*
21 RTC's office address²), Hall never asked for Mr. Miscavige or left any

22
23 ¹ The Court should take judicial notice of the unpublished opinion in *City*
24 *Breeze*. *See People v. Hill*, 17 Cal. 4th 800, 847-48 (1998) (taking judicial
25 notice of unpublished opinion citing same prosecutor for prosecutorial
misconduct in a separate case); *see also* Request for Judicial Notice, Ex. A.

26 ² Nor is it Mr. Miscavige's "dwelling house" or "usual place of abode." *Code of*
27 *Civil Procedure* § 415.20(b). Instead, 6331 Hollywood Boulevard is the office
address of Church of Scientology International ("CSI," another defendant).
FAC ¶ 7. To be clear, no one lives at 6331 Hollywood Boulevard. Declaration
28 of Lynn R. Farny ("Farny Decl."), ¶2.
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1 documents for Mr. Miscavige. Farny Decl., Ex. D (Declaration of Lewis
2 Miranda (“Miranda Decl.”), ¶¶ 7-10).

3 Third, Mr. Miscavige never received a copy of the summons and original
4 complaint in the mail, suggesting that no such mailing was made.

5 This Court granted Mr. Miscavige’s motion to quash the purported
6 service. *See* RJD, Ex. B (March 11, 2020 Tentative Ruling, later adopted) at 4-

7 5. Specifically, the Court ruled:

8 The weight of the evidence cuts against Plaintiffs. The presumption
9 of service is outweighed by the declarations of Lynn Farney, Warren
10 McShane and Lewis Miranda. The motion to quash is GRANTED
11 as to Miscavige. This is not a determination that the proofs of
12 service were “fraudulent” — service was not accomplished, so
Defendant Miscavige has not been properly brought into the action.
... The motion to quash as to Miscavige is granted.

13 *Id.*

14 B. Plaintiffs Delayed Any Attempt to Serve the First Amended
Complaint for Nine Months

15 On February 28, 2020, twelve days before this Court’s March 11, 2020
16 Order quashing Plaintiffs’ purported service of the original complaint on Mr.
17 Miscavige, Plaintiffs filed the FAC. Plaintiffs made no attempt to personally
18 serve Mr. Miscavige with the FAC, however, for at least *nine months*.

19 After all this time, Plaintiffs staged repeated service attempts on Mr.
20 Miscavige in Los Angeles at a time when it was public knowledge that Mr.
21 Miscavige was thousands of miles away in Clearwater, Florida.

22 Plaintiffs assert that on November 21, 2020, November 25, 2020, and
23 December 2, 2020, they attempted service on Mr. Miscavige, almost
24 simultaneously, at 6331 Hollywood Boulevard, Los Angeles, California 90028
25 (defendant Church of Scientology International (“CSI”)’s office address), and
26 1710 Ivar Avenue, Los Angeles, California 90028 (defendant RTC’s office
27 address). *See* Declaration of Due Diligence of Carlos Fernandez (“Fernandez

1 Decl."); *see also* Farny Decl., ¶ 5; Declaration of Warren McShane ("McShane
2 Decl."), ¶ 2. None of these attempts was sufficient to confer jurisdiction over
3 Mr. Miscavige.

4 1. 6331 Hollywood Boulevard

5 *The office building at 6331 Hollywood Boulevard is not an appropriate*
6 *location to serve Mr. Miscavige. It is not his "dwelling house, usual place of*
7 *abode, [or] usual place of business." Code of Civil Procedure § 415.20(b).*

8 Mr. Miscavige is the Chairman of the Board of RTC, but RTC's address
9 is 1710 Ivar Avenue, *not* 6331 Hollywood Boulevard. *See* McShane Decl., ¶ 2.

10 Plaintiffs know this. Their FAC *admitted* that RTC's primary place of
11 business and headquarters is located at 1710 Ivar Avenue. FAC ¶ 8.

12 Plaintiffs' baseless assertion that Mr. Miscavige *resides* at 6331
13 Hollywood Boulevard and thus may be served there, is incorrect. *See* FAC ¶
14 10; *see also* Fernandez Decl.

15 The building at 6331 Hollywood Boulevard is not a residence at all. It is
16 instead the office address for CSI, a separate legal entity from RTC. Farny
17 Decl., ¶ 2; *see also* FAC ¶ 4 (alleging 6331 Hollywood Boulevard is "CSI's
18 primary place of business and headquarters").

19 Mr. Miscavige does not reside at 6331 Hollywood Boulevard. *See* Farny
20 Decl., ¶ 2 (declaring that 6331 Hollywood Boulevard is "not designed for, or
21 used as, a personal residence for anyone, including Mr. Miscavige").

22 Thus, any purported attempts to serve Mr. Miscavige at 6331 Hollywood
23 Boulevard are invalid and should be quashed.

24 2. 1710 Ivar Avenue

25 Plaintiffs' process server claims to have made three attempts to serve
26 Mr. Miscavige at 1710 Ivar Avenue. These attempts were inadequate – they
27 did not meet the statutory requirements for service of process, and it was well

1 known that Mr. Miscavige was not in Los Angeles, nor the state of California,
2 when service was allegedly attempted.

3 ***November 21, 2020***

4 On November 21, 2020 at 9:54 a.m., a man, who has since been
5 identified as Carlos Fernandez, approached Stano Sersen, a CSI security
6 guard, who was standing outside on the sidewalk. Declaration of Stano Sersen
7 (“Sersen Decl.”), ¶ 2.

8 Fernandez was wearing a backpack and did not have any papers in his
9 hands. *Id.* Indeed, as shown in security footage, he was holding only a coffee
10 cup. Farny Decl., ¶ 6 (attaching screenshots of surveillance video footage).³
11 Fernandez pointed to 1710 Ivar Avenue and asked Sersen if this was the place
12 to drop a “package” for David Miscavige. Sersen Decl., ¶ 2. Sersen said it was
13 not, and Fernandez left. *Id.*

14 Fernandez did not ask to meet with Mr. Miscavige. *Id.* ¶ 3. He did not
15 explain that he was attempting to serve a summons and complaint (or
16 anything else) on Mr. Miscavige (or anyone else), or ask if there was anyone
17 present who could assist him in that effort. *Id.* In fact, Fernandez made no
18 attempt to ascertain whether Sersen even knew who Mr. Miscavige was. *Id.*

19 ***November 25, 2020***

20 As verified by security video footage, on November 25, 2020 at 12:46
21 p.m. (not 9:54 a.m. as represented, under penalty of perjury, by Fernandez in
22 his Declaration of Due Diligence), Fernandez approached Shun Tokunaga, a
23 mail clerk who was working at 1710 Ivar Avenue. Declaration of Shun
24 Tokunaga (“Tokunaga Decl.”), ¶¶ 1-2; Farny Decl., ¶ 7 (attaching screenshots
25 of surveillance video footage).

26
27 ³ The complete security video footage will be made available to the Court upon
28 request.
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1 Tokunaga had just been receiving packages through an open door to
2 1710 Ivar Avenue when Fernandez approached. *Id.* ¶ 2. Contrary to
3 Fernandez's Declaration of Due Diligence, Tokunaga did not open the door for
4 Fernandez as the door was already open. *Compare* Declaration of Due
5 Diligence *with* Tokunaga Decl., ¶ 2. Fernandez was wearing a backpack and
6 carrying a phone. Tokunaga Decl., ¶ 3. He did not have any papers in his
7 hands. *Id.*

8 Fernandez not only concealed his true purpose, he also failed to give
9 enough information that a reasonable person could understand what he
10 wanted. Specifically, Fernandez told Tokunaga that he had a "delivery" for
11 David Miscavige, and asked whether Miscavige was there. *Id.* ¶ 4.

12 Tokunaga, a mail clerk, reasonably understood that Fernandez was a
13 delivery person. Tokunaga replied to Fernandez's question of whether Mr.
14 Miscavige was there, by stating "no." Tokunaga asked Fernandez for an
15 invoice. *Id.*

16 Fernandez said that he would check on the invoice and come back later.
17 *Id.* Then Fernandez left. *Id.*

18 Fernandez did not explain that he was attempting to serve a summons
19 and complaint (or anything else) on Mr. Miscavige (or anyone else), or ask if
20 there was anyone present who could assist him in that effort. *Id.* ¶ 6.

21 In fact, Fernandez made no attempt to ascertain whether Tokunaga
22 even knew who Mr. Miscavige was. *Id.* ¶ 5. Instead, he pretended to have a
23 package to deliver and then left in purported search of a fictional invoice. *See*
24 *id.* ¶ 4.

25 Had Fernandez made any reasonable efforts to serve Mr. Miscavige
26 personally, he would have learned that Tokunaga has never met or spoken
27 with Mr. Miscavige, and would not know how to contact him. *Id.* ¶ 7.

1 **December 2, 2020**

2 Fernandez represents, under penalty of perjury in his Declaration of
3 Due Diligence, that at approximately 3:20 pm on December 2, 2020, he rang
4 the bell to seek entry to 1710 Ivar Avenue. Fernandez Decl. But the
5 building's security video footage reveals that he did not. Farny Decl. ¶ 8
6 (attaching screenshots of surveillance video footage).

7 Instead, Fernandez walked uninvited and unannounced into 1710 Ivar
8 Avenue through a door that was temporarily ajar. Declaration of Ervin Kisded
9 ("Kisded Decl.") ¶¶ 4-6.

10 Ervin Kisded, a mail and freight clerk, was in the shipping room at the
11 time with Davide Greco, a mail and transport clerk. *Id.* ¶ 4. Kisded did not
12 hear the doorbell ring. *Id.* ¶ 5. He did not recognize Fernandez. *Id.* ¶ 4.

13 Kisded was particularly alarmed by the unauthorized entrant given the
14 ongoing COVID-19 pandemic, and resulting concerns for the health and safety
15 of himself and his coworkers. *See id.* ¶ 7; *see also* Declaration of Davide Greco
16 ("Greco Decl."), ¶ 4. In light of the COVID-19 pandemic, entrance to 1710 Ivar
17 Avenue has been extremely limited. Kisded Decl., ¶ 3. No unnecessary people
18 are admitted to the building, and no one is admitted without following COVID-
19 19 safety protocols. *Id.*

20 Kisded saw that Fernandez had something in his hand, but was not
21 wearing gloves, in violation of health and safety protocols at the building. *Id.*
22 ¶¶ 3, 6. Nor did Fernandez clean his shoes on the provided sanitization mat,
23 which is also required of all entrants into 1710 Ivar Avenue under COVID-19
24 protocols. *Id.*

25 When Kisded saw a man he did not know enter the building without
26 authorization, he told the man to exit the building and ring the bell for
27 someone to come out to meet with him. *Id.* ¶ 8. Fernandez claimed that he

1 had rung the bell. *Id.* Kisded explained that he had not heard the bell. *Id.*
2 Kisded *again* asked Fernandez to please wait outside the building. *Id.*
3 Fernandez refused. *Id.* ¶ 9.

4 Instead, Fernandez walked further into the building, and left the stack
5 of papers on an unattended shelf. *Id.* ¶¶ 9-10. Kisded then explained that he
6 could not receive any papers. *Id.* ¶ 10. Indignant, Fernandez stated: “too late,
7 it’s done,” appeared to take Kisded’s picture, and left. *Id.*

8 Fernandez (1) never disclosed the purpose of his visit or the content of
9 his papers, as required for substitute service under *Code of Civil Procedure* §
10 415.20; (2) never stated that Mr. Miscavige was the intended recipient of the
11 papers; and (3) never asked to see someone authorized to accept service. *Id.*
12 ¶¶ 11-13.

13 Indeed, when Fernandez was instructed to leave the building and ring
14 the bell so that he could be assisted, Fernandez refused. *Id.* ¶¶ 8-9.

15 Instead, Fernandez dropped a stack of papers,⁴ which did not have an
16 address, on an unattended shelf and left. *Id.* ¶¶ 10-12.

17 On December 10, 2020, Plaintiffs filed a Proof of Service and Declaration
18 of Due Diligence of Carlos Fernandez claiming that service on Mr. Miscavige
19 was accomplished via substitute service on December 2, 2020.

20 III. **THE MOTION TO QUASH SHOULD BE GRANTED**

21 “A defendant, on or before the last day of his or her time to plead or
22 within any further time that the court may for good cause allow, may serve
23 and file a notice of motion for one or more of the following purposes: To quash
24 service of summons on the ground of lack of jurisdiction of the court over him
25 or her.” *Code of Civil Procedure* § 418.10(a)(1).

27 ⁴ Though the summons lists the name of every defendant in this action,
28 including CSI and RTC, the papers in no way indicated that they should be
directed to Mr. Miscavige.

1 The service of process was supposedly mailed to Mr. Miscavige on
2 December 2, 2020. Under *Code of Civil Procedure* § 415.20(b), the effective
3 date of service is December 12, 2020, ten days later. Since this motion was
4 filed on January 11, 2021, the motion is timely.

5 “[S]ervice of summons is not effective and the court does not acquire
6 jurisdiction of the party unless the statutory requirements for service of
7 summons are met.” *Borsuk v. Appellate Division of Superior Court*, 242 Cal.
8 App. 4th 607, 612 (2015) (quoting *Engebretson & Co. v. Harrison*, 125 Cal.
9 App. 3d 436, 443 (1981)).

10 “[C]ompliance with the statutes governing service of process is essential
11 to establish that court’s personal jurisdiction over a defendant.” *Lebel v. Mai*,
12 210 Cal. App. 4th 1154, 1160 (2012) (*citing Dill v. Berquist Constr. Co.*, 24 Cal.
13 App. 4th 1426, 1439 (1994)).

14 Even “[k]nowledge by a defendant of a plaintiff’s action does not satisfy
15 the requirement of adequate service of a summons and complaint.” *Renoir v.*
16 *Redstar Corp.*, 123 Cal. App. 4th 1145, 1153 (2004) (citations omitted).

17 Thus, once a motion to quash is filed, the burden is on the plaintiff to
18 prove by a preponderance of evidence that the service is valid and the court
19 has jurisdiction over the person. *Bolkiah v. Superior Court*, 74 Cal. App. 4th
20 984, 991 (1999); *see also Lebel*, 210 Cal. App. 4th at 1163 (“plaintiff bore the
21 burden of showing facts requisite to a valid service”).

22 A. Plaintiffs’ Purported Attempts at Substituted Service Did Not
23 Confer Jurisdiction

24 Substituted service of process is permitted only if personal service
25 cannot be accomplished with “reasonable diligence.” *Code of Civil Procedure*
26 § 415.20(b). Reasonable diligence may be shown by *multiple* attempts at
27 personal service at a *proper* place. *See Am. Express Centurion Bank v. Zara*,
28 199 Cal. App. 4th 383, 389 (2011) (repeated attempts at personal service are
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1 required to show reasonable diligence). “[S]trict compliance with the provision
2 requiring reasonable diligence” is required. *Evartt v. Superior Court*, 89 Cal.
3 App. 3d 795, 801 (1979). “Perfunctory efforts” to personally serve a defendant
4 do not satisfy the “reasonable diligence” requirement. *See id.* at 802; *see also*
5 *Joe Hand Promotions, Inc. v. Saddeldin*, 2014 WL 1877428, at *5 (E.D. Cal.
6 May 9, 2014) (citing *Evartt*, 89 Cal. App. 3d at 802).

7 If personal service cannot be accomplished after reasonable diligence,
8 service of process may be completed by:

9 leaving a copy of the summons and complaint at the person’s
10 dwelling house, usual place of abode, usual place of business, or
11 usual mailing address other than a United States Postal Service
12 post office box, *in the presence of* a competent member of the
13 household or *a person apparently in charge of his or her office*, place
14 of business, or usual mailing address other than a United States
15 Postal Service post office box, at least 18 years of age, *who shall be*
16 *informed of the contents thereof*, and by thereafter mailing a copy of
the summons and of the complaint by first-class mail, postage
prepaid to the person to be served at the place where a copy of the
summons and complaint were left.

17 *Code of Civil Procedure* § 415.20(b) (emphasis added).

18 Here, Plaintiffs failed to attempt personal service of Mr. Miscavige with
19 reasonable diligence. They then failed to comply with the bedrock
20 requirements for substitute service both by failing to leave a copy of the
21 summons and complaint with a person in charge of the RTC office, and by
22 failing to inform the “recipient” of the contents of the papers, much less to
23 whom they were to be delivered.

24 1. 6331 Hollywood Boulevard is Not a Proper Place for Service

25 As Plaintiffs admitted, 6331 Hollywood Boulevard is the office address
26 for CSI. FAC ¶ 7; *see Hearn Pacific Corp. v. Second Generation Roofing, Inc.*,
27 247 Cal. App. 4th 117, 131–132 (2016) (“[A] pleading party may be bound by
28 the factual allegations it makes in a complaint . . .”).

1 Although Plaintiffs have also asserted that 6331 Hollywood Boulevard is
2 Mr. Miscavige's residence, they have offered *no evidence* supporting that
3 baseless assertion. Nor could they: Mr. Miscavige does not live at 6331
4 Hollywood Boulevard. Farny Decl., ¶ 2.

5 Mr. Lynn Farny is the Corporate Secretary of CSI. *Id.* ¶ 1. He has
6 worked for CSI in an official capacity since 1984. *Id.* He is personally familiar
7 with the building's uses. *Id.* ¶¶ 1-2. As Mr. Farny stated, Mr. Miscavige does
8 not now live, and has never lived, at 6331 Hollywood Boulevard. *See id.* ¶ 2.

9 Therefore, any attempts to serve Mr. Miscavige at 6331 Hollywood
10 Boulevard as his "dwelling house" or "usual place of abode" were not
11 reasonable, as they were not made at a proper place, and cannot satisfy the
12 reasonable diligence requirement for personal service under *Code of Civil*
13 *Procedure* § 415.20(b).

14 2. Plaintiffs Did Not Exercise Reasonable Diligence Before
15 Resorting to Substitute Service

16 "[T]he burden is upon the plaintiff to show reasonable diligence to effect
17 personal service and each case must be judged upon its own facts." *Evartt*, 89
18 Cal. App. 3d at 801.

19 California courts agree that, at minimum, "reasonable diligence" usually
20 requires at least "two or three attempts to personally serve a defendant at a
21 proper place." *See, e.g., Am. Express Centurion Bank*, 199 Cal. App. 4th at
22 389.

23 Here, Plaintiffs' process server did not exercise reasonable diligence to
24 effect personal service at 1710 Ivar Avenue before resorting to substitute
25 service.

26 Indeed, each of Fernandez's three purported service attempts at 1710
27 Ivar Avenue was perfunctory at best, and none was reasonably calculated to
28 achieve personal service on Mr. Miscavige, who was known to be in Florida
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1 (not California) on the days of the purported service attempts. Therefore,
2 Plaintiffs could not have been trying to actually serve Mr. Miscavige.

3 On his first visit, Fernandez approached a CSI security guard (Mr.
4 Sersen) who happened to be on the street outside the building, gestured
5 towards 1710 Ivar Avenue, and asked whether it was the place to drop a
6 package for Mr. Miscavige. Sersen Decl., ¶ 2. When Sersen indicated that it
7 was not, Fernandez left. *Id.*

8 Fernandez made no attempt to serve Mr. Miscavige personally. He did
9 *not ask* to meet with Mr. Miscavige, or even whether Mr. Miscavige generally
10 worked in the building. *Id.* ¶ 3. He did *not state* that he was attempting to
11 serve a summons and complaint (or anything else) on Mr. Miscavige (or
12 anyone else), and he did *not ask* if there was anyone in the building who could
13 assist him in that effort. *Id.* Fernandez made no attempt to ascertain
14 whether Sersen had any connection with RTC's offices, or even knew how to
15 reach Mr. Miscavige. *Id.*

16 Thus, Fernandez's purported service attempt on November 21, 2020 was
17 not a good-faith effort to serve Mr. Miscavige, and should be disregarded.

18 On his second visit, Fernandez approached an open door and spoke only
19 to a mail clerk (Mr. Tokunaga) who has no authority to speak on behalf of
20 RTC, much less Mr. Miscavige. Indeed, Tokunaga has never met Mr.
21 Miscavige, would not know whether Mr. Miscavige was in the building (or
22 anywhere else) and would not know how to contact him. Tokunaga Decl., ¶ 7.

23 Fernandez took no steps reasonably calculated to personally serve Mr.
24 Miscavige. He concealed the true purpose of his visit by telling Tokunaga only
25 that he had a "delivery" for David Miscavige. When Tokunaga asked for an
26 invoice, Fernandez falsely claimed he would check and come back later. *Id.* ¶
27 4. Fernandez then left. *Id.*

1 Had Fernandez been interested in serving Mr. Miscavige, he would have
2 at least asked to speak with someone in charge of RTC's offices, if not Mr.
3 Miscavige himself. Instead, he gave so little information, all of which was
4 intended to conceal his intentions, that Tokunaga had no reason to believe,
5 and did not believe, that Fernandez was there to see Mr. Miscavige, much less
6 to effect legal service of a summons and complaint (or anything else) on Mr.
7 Miscavige (or anyone else). *See id.* ¶¶ 4, 6.

8 Thus, Fernandez's purported service attempt on November 25, 2020 was
9 not a good-faith effort to serve Mr. Miscavige, and should be disregarded.

10 Indeed, RTC did not learn of either of Fernandez's November 2020 visits
11 to 1710 Ivar Avenue until the Proof of Service was filed. *See* McShane Decl. ¶
12 3.

13 On his final visit, Fernandez made *no* effort to personally serve Mr.
14 Miscavige. Instead, Fernandez attempted a "drop-and-run" version of
15 substitute service upon the first person he saw, ignoring that person's identity,
16 position or authority (or lack thereof).

17 To that end, he never stated that he had papers for Mr. Miscavige, never
18 informed anyone of the contents thereof, and never attempted to ascertain
19 whether Mr. Miscavige was available. Kisded Decl., ¶¶ 11-13; Declaration of
20 Davide Greco ("Greco Decl."), ¶¶ 5-6.

21 Fernandez *refused* directions to ring the doorbell and wait to be assisted,
22 *dropped a stack of papers, which in no way indicated that it should be directed*
23 *to Mr. Miscavige, on an empty shelf without explaining its significance*, and
24 left. Kisded Decl., ¶¶ 8-13; Greco Decl., ¶¶ 6-7. Nothing about Fernandez's
25 actions on December 2, 2020 was reasonably calculated to accomplish personal
26 service on Mr. Miscavige.

27 Thus, none of Fernandez's cursory visits to 1710 Ivar Avenue constituted

even one reasonably diligent attempt to serve Mr. Miscavige personally with the FAC. Plaintiffs have thus failed their statutory obligation to serve Mr. Miscavige personally and may not resort to substitute service. *See Code of Civil Procedure* § 415.20(b).

3. Even If Substitute Service Was Permitted — It Was Not — Plaintiffs Failed to Comply With The Statutory Requirements

Even if Plaintiffs' purported attempts to serve Mr. Miscavige with the FAC personally were sufficient to establish reasonable diligence such that Mr. Miscavige could be served through substitute service — they were not — Plaintiffs' purported substitute service attempt failed to satisfy the mandatory requirements of *Code of Civil Procedure* § 415.20(b).

Specifically, Fernandez failed to (1) leave the service papers with “a person apparently in charge of [Mr. Miscavige’s] office [or] place of business,” and (2) to “inform [that person] of the contents thereof.” *See id.*

Instead, Fernandez made his way into a mailroom, dropped a stack of papers, which did not indicate that it should be directed to Mr. Miscavige, on an empty shelf, and left. Kisded Decl. ¶¶ 8-12.

Kisded, the person to whom Fernandez spoke, is a mail and freight clerk who approached Fernandez because he saw an unauthorized person enter the building without complying with the building’s health and safety protocols for the COVID-19 pandemic. *Id.* ¶¶ 2-3, 6-7.

Kisded communicated that he was not authorized to receive “papers” (much less service of process), and immediately and repeatedly explained to Fernandez how to receive assistance: Simply ring the bell and wait for someone to come to the door. *Id.* ¶¶ 8, 10. Fernandez refused. *Id.* ¶ 9.

Thus, any assertion that Kisded was “apparently in charge of [Mr. Miscavige’s] office [or] place of business” is unreasonable.

But even if Kisded were a proper person to accept substitute service — he was not — Fernandez failed to inform Kisded of the contents of the stack of papers, or even for whom it was intended. *Id.* ¶¶ 11-13. Indeed, Fernandez never mentioned he had papers to serve Mr. Miscavige, and the papers themselves did not indicate to whom they should be directed. *Id.*

6 Thus, Plaintiffs' substitute service attempt was insufficient to ensure a
7 reasonable likelihood that the summons and FAC would reach their intended
8 recipient. *See* 50A Cal. Jur. 3d *Process, Notices, and Subpoenas* § 26 ("Service
9 must be made upon a person whose relationship with the person to be served
0 makes it more likely than not that they will deliver process to the named
party.").

2 Far from meeting the requirements of the service statutes, or even
3 demonstrating reasonable diligence, Plaintiffs are *still* failing to comply with
4 their fundamental obligation to serve the FAC. Mr. Miscavige was not served,
5 and the purported proof of service should be quashed.

IV. CONCLUSION

7 Mr. Miscavige respectfully requests that the Court grant this Motion to
8 Quash.

DATED: January 11, 2021 ELKINS KALT WEINTRAUB REUBEN
GARTSIDE LLP

By:

JEFFREY K. RIFFER

Attorneys for Specially-Appearing Defendant
David Miscavige



Court Reservation Receipt

Reservation

Reservation ID: 368970839993631373510631	Status: RESERVED
Reservation Type: Motion to Quash Service of Summons	Number of Motions: 1
Case Number: 19STCV29458	Case Title: CHRISSIE CARNELL BIXLER, et al. vs CHURCH OF SCIENTOLOGY INTERNATIONAL, et al.
Filing Party: David Miscavige (Defendant)	Location: Stanley Mosk Courthouse - Department 57
Date/Time: May 12th 2021, 8:30AM	Confirmation Code: CR-YQVNKZPBH4A2MB4

Fees

Description	Fee	Qty	Amount
Motion to Quash Service of Summons	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: MasterCard
Account Number: XXXX1226	Authorization: 04573Z

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